

## CRIMINAL APPELLATE.

Before Mr. Justice Batchelor and Mr. Justice Heaton.

1912.

EMPEROR v. CHIMANLAL JAGJIVAN.\*

August 30.

*Wadhwan Civil Station—British India—Bombay Abkari Act (Bombay Act V of 1878), section 43†—Bhang—Importation—Carrying bhang by rail from Wadhwan Civil Station to Viramgam.*

The accused was charged with having imported into the Presidency of Bombay *bhang* (an intoxicating drug), an offence punishable under section 43 of the Bombay Abkari Act (Bombay Act V of 1878), inasmuch as he carried with him twenty tolas of *bhang* from Wadhwan Civil Station to Viramgam by rail :—

*Held*, that the Civil Station at Wadhwan was not a part of British India and the accused was guilty of the offence with which he was charged.

*Triccam Panachand v. The Bombay Baroda and Central India Railway Company*<sup>(1)</sup>, not followed.

*Queen-Empress v. Abdul Latib valad Abdul Rahiman*<sup>(2)</sup>, followed.

THIS was an appeal by the Government of Bombay from an order of acquittal passed by the Second Class Magistrate at Viramgam.

The accused purchased twenty tolas of *bhang* (an intoxicating drug) at Wadhwan Civil Station, and carried the article with him to Viramgam (a place in British India) which he reached by rail. When searched at the Viramgam Railway Station, the packet of *bhang* was found with the accused. On these facts, the accused was charged with having imported the

\* Criminal Appeal No. 263 of 1912.

† The material portion of the section runs as follows :—

43. Whoever, in contravention of this Act, or of any rule or order made under this Act, or of any license, permit or pass obtained under this Act,—

(a) imports or exports liquor, hemp or any intoxicating drug into or out of any part of the Presidency of Bombay ;

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shall be punished for each such offence with fine which may extend to one thousand rupees or with imprisonment for a term which may extend to six months, or with both.

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intoxicating drug without a license into the Presidency of Bombay, an offence punishable under section 43 of the Bombay Abkari Act (Bombay Act V of 1878). The defence of the accused was that he believed that Wadhwan Civil Station was part of British India, and that his act consequently was not an offence.

The Magistrate held that Wadhwan Civil Station was part of British India, following the case of *Triccam Panachand v. The Bombay Baroda and Central India Railway Company*<sup>(1)</sup>. He, therefore, held that the accused had committed no offence; and acquitted him.

The Government of Bombay appealed to the High Court against the order of acquittal.

*L. A. Shah*, acting Government Pleader, for the appellant.—The case of *Triccam Panachand v. The Bombay Baroda and Central India Railway Company*<sup>(1)</sup>, on which the Magistrate has relied, is the decision of a single Judge and is not binding on this Court. In *Queen-Empress v. Abdul Latib valad Abdul Rahiman*<sup>(2)</sup> it was held that the Rajkot Civil Station is not a part of British India. The treaties under which the Civil Stations at Rajkot and Wadhwan are held are in identical terms (see Aitchison's Treaties, Vol. VI, p. 183). The latter decision governs this case and the Wadhwan Civil Station is not within British India. See also; *Hemchand Devchand v. Azam Sakarlal Chkotamlal*<sup>(3)</sup>.

Bombay Abkari Act does not apply to the Kathiawar States, which are governed by their own Abkari rules. The act of the accused in conveying *bháng* from Wadhwan Civil Station to Viramgam amounts to importing the drug into the Bombay Presidency and he has committed an offence punishable under section 43, clause (a) of the Bombay Abkari Act, 1878.

*T. R. Desai*, for the accused.—The decision in *Triccam Panachand v. The Bombay Baroda and Central India Rail-*

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*way Company*<sup>(1)</sup> is exactly in point and ought to govern this case. The case of *Queen-Empress v. Abdul Latib valad Abdul Rahiman*<sup>(2)</sup> refers to another State and is based on a different treaty.

The area assigned to railway purposes in Wadhwan is by treaty vested in His Majesty (see Aitchison's Treaties, Vol. VI, p. 190). The Railway Station at Wadhwan is in any event a part of British India. The act of the accused in carrying *bháng* from that Railway Station to Virangam does not amount to the offence charged against him.

BATCHELOR, J. :—In this case the accused was charged under section 43 of the Bombay Abkari Act (Bombay Act V of 1878), with importing an intoxicating drug into the Presidency of Bombay. The fact proved is that the accused brought twenty tolas of *bháng*, from Wadhwan Civil Station to Virangam. Virangam admittedly is British territory. It is further admitted that the importation of twenty tolas of *bháng* into British territory from foreign territory would be punishable under section 43.

The only question which arises, therefore, is whether Wadhwan Civil Station is within the Presidency of Bombay or not. The Abkari Act extends to the whole of the Presidency of Bombay (see section 2) ; and by the Bombay General Clauses Act (Bombay Act I of 1904), 'Presidency of Bombay' means the territories within British India for the time being under the administration of the Governor of Bombay in Council. 'British India' is by the same Act defined to mean all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor General of India or through any Governor or any other officer subordinate to the Governor General of India.

In the Court below the learned Magistrate has held that Wadhwan Civil Station is within the limits of British India, and for that view he has relied upon Mr. Justice Bayley's

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decision in *Triccam Panachand v. The Bombay Baroda and Central India Railway Company*<sup>(1)</sup>. That decision is clear authority for the Magistrate's decision, and the real question now before us may be said to be whether *Triccam Panachand's case* was rightly decided. It was the decision of a single Judge and as such is not binding upon us. It is unnecessary, therefore, to consider the reasoning upon which that case proceeded, but it is material to say, with great respect, that the grounds upon which Mr. Justice Bayley based his determination do not appear to my own mind to carry conviction.

While we are not bound by Mr. Justice Bayley's decision, there is a decision of this Court which is binding upon us, and that is the decision of the Bench in *Queen-Empress v. Abdul Latib valad Abdul Rahiman*<sup>(2)</sup>, where Mr. Justice Birdwood and Mr. Justice Jardine have held that the Civil Station at Rajkot is not part of British India within the meaning of St. 21 & 22 Vic., c. 106.

It is urged on behalf of the appellant that the position of Rajkot Civil Station is, for our present purposes, indistinguishable from that of Wadhwan Civil Station; and upon reference to the agreements made with these two States, and recorded in Aitchison's Treaties, I am of opinion, that this argument must be allowed. So far as the material clauses in the two agreements are concerned, they are couched in identically the same language, nor has any attempt been made before us to distinguish the language in the one agreement from the language in the other. It follows, therefore, that if in the case of Rajkot the true construction of the agreement is that Rajkot Civil Station remains outside British India the same construction must be placed upon the agreement with Wadhwan. Therefore following the decision in *Abdul Latib's case*, which for the rest commends itself to my own mind, we must, I think, hold that Wadhwan Civil Station is outside the limits of British India. It is true that in *Abdul Latib's case* what the Court decided was that Rajkot was not part of British

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India, as that term is defined in the Indian Penal Code, and that the definition of 'British India' in the Indian Penal Code is framed in different words from the definition which occurs in the Bombay General Clauses Act. It appears to me, however, that so far as regards our present purposes this difference in language is not a difference of substance. Reference may also, I think, be made to the Privy Council decision in *Hemchand Devchand v. Azam Sakarlal Chhotamlal*<sup>(1)</sup>, which seems to me to lend support to the view that Wadhwan Civil Station is not a place within His Majesty's dominions which for the time being is governed by His Majesty through the Governor General of India or through any Governor subordinate to the Governor General. It may be observed further that, as was admitted in argument, the laws which prevail in the Bombay Presidency do not prevail *proprio vigore* in Wadhwan Civil Station, and it is irrelevant to the present point that some of such laws are extended to the Civil Station by recourse to other powers than those vested in the Bombay Legislature.

For these reasons, I am of opinion that, notwithstanding the decision in *Triccam Panachand v. The Bombay Baroda and Central India Railway Company*<sup>(2)</sup> we ought now to hold that Wadhwan Civil Station is not part of British India. If that is so, then it follows that the accused must be convicted of the offence with which he was charged, and I would suggest that he be punished with a nominal fine of one Rupee, seeing that the object of the appeal is not to secure this particular accused's punishment so much as to have a definite pronouncement as to the legal position of Wadhwan Civil Station.

HEATON, J. :—I agree in the conclusion that the Wadhwan Civil Station is not part of British India, and I also agree that the decision in *Queen-Empress v. Abdul Latib valad Abdul Rahiman*<sup>(3)</sup> is in reality a binding authority in this case. Since that decision was pronounced matters have progressed

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a good deal, arguments have been rife and decisions have been obtained. The subject is one which from time to time has occupied my attention, and I could, were I so disposed, deliver a very lengthy, however imperfect, judgment on the point now in dispute. But it seems to me quite unnecessary to do this ; unnecessary for me to say more than that, I think, the decision given in *Queen-Empress v. Abdul Latib Abdul Rahiman* was absolutely right.

I would only say a word or two about one argument which was advanced by Mr. Desai. He said : " it cannot be that the people who all their lives have supposed they were living in British India, who are governed by British Officials and subject to British laws, are in truth not living in British India at all but in a Native State."

Happily or unhappily it may be so. There are many places in other parts of the world where British laws are in force, where there are British Courts and British Officials, where there are people living to all intents and purposes under British dominion, but which are in truth not part of His Majesty's dominions. I would point out one more thing, and that is that, as a fact these British laws, under which the inhabitants of the Wadhwan Civil Station are living, are applied to that particular place by a special process and do not apply of themselves ; and I can imagine no more cogent circumstance for showing to thoughtful minds that Wadhwan Civil Station is in truth not a part of British India.

*Appeal allowed.*

R. R.